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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 425

WALLS MANUFACTURING CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 23-26) is not yet reported. The court's earlier opinion (Pet. 30-35) is reported at 299 F. 2d 114. The Board's first decision and order are reported at 128 NLRB 487 (J.A. 183-185), and its supplemental decision

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"J.A." refers to the Joint Appendix printed for the use of the court below and filed with the petition; references preceding a semi-colon are to the Board's findings, and succeeding references are to the supporting evidence.

and order are reported at 137 NLRB 1317 (J.A. 186-194).

JURISDICTION

The judgment of the court of appeals was entered on June 6, 1963 (Pet. 2). The petition for a writ of certiorari was filed on August 31, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*).

QUESTION PRESENTED

Whether the Board properly found that an employee was engaged in concerted activity protected by Section 7 of the National Labor Relations Act in writing a letter to the State Health Department, on behalf of herself and other employees, which complained about unsanitary conditions in the plant restroom.

STATUTE INVOLVED

The relevant statutory provisions are set forth at pp. 27-29 of the petition.

STATEMENT

A. The first Board and Court Decisions

Petitioner is a Texas corporation which manufactures, sells and distributes clothing (J.A. 169). In June 1957, the International Ladies Garment Workers Union started an organizational campaign at petitioner's plant in Cleburne, Texas. Mrs. Mary

Akey, one of the leaders of the campaign, served as chairlady of the organizing committee. She held meetings in her home, obtained numerous authorization cards from fellow employees, and allowed her name and picture to appear on a handbill urging employees to vote for the union. At one point, after petitioner's attorney made an antiunion speech to the assembled employees, Mrs. Akey sent the Company a telegram requesting equal time to present the union's side of the story and signed the telegram "chairlady, Walls Organizing Committee, ILGWU" (J.A. 170; 2-7). The campaign was unsuccessful, however, and the union lost an election conducted by the Board (J.A. 170; 10-11).

In June 1958, there were frequent discussions among the women employees at the plant about the unsanitary and uncomfortable conditions in the ladies' restroom. One employee, Mrs. LeDanois, specifically complained to the production manager. As a result of these discussions, Mrs. Akey, on July 2, 1958, sent a written complaint to the Texas State Health Department. Her letter noted that it was written at the request of several other employees (J.A. 172; 1-5). Shortly afterwards, the county health officer informed the Company that an official complaint had been filed, and the Company made a number of sanitary improvements (J.A. 173). However, dissatisfaction and complaints among the women employees about the restrooms continued, and on January 6, 1959, Mrs. Akey again wrote to the State Health Department objecting to "the unsanitary conditions" (J.A. 18-21, 43-44). This second letter, although it did not so

state, was authorized in advance by other employees.[2] In relevant part, the letter read (J.A. 174-175):

> I believe that Walls have had ample time to make an effort to correct the unsanitary conditions now existing in this establishment. However, little has been done in that direction.
>
> Walls only action was to build a toilet. There are no heating facilities in the toilet, and recently the temperature was below freezing in the toilet.
>
> There are no covered disposal receptacles for lunch sacks, etc. There is not sanitary place for employees to eat their lunch. The toilet is cleaned once each week. No hot water, no dressing rooms.
>
> There are approximately two hundred (200) females working in this plant, and it is apparent that Walls is financially equipped to comply with Occupational Health Regulation No. 2.

The letter was forwarded to the city health officer, who inspected the plant facilities and found that they satisfied the minimum health standards. The health officer showed Mrs. Akey's January 6 letter to a Company official, who commented that the Company suspected that Mrs. Akey had also made the earlier complaint. (J.A. 175-176; 101.) Two days later, Mrs. Akey was called into Vice-President Finnell's office and told that she was fired. When Mrs. Akey asked the reason for her sudden discharge, Finnell, in

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[2] The Board based this finding "on the uncontradicted and credited testimony of two other employees that they approved Akey's letter before it was mailed" (J.A. 181; 22, 45, 69-70, 85-86).

the presence of two other persons, told her that (J.A. 176; 152):

> * * * apparently she wasn't satisfied with our facilities and it didn't look like she was ever going to be and she had written a letter to the Health Department in Austin in which she had made some statements that were certainly not true, and we just couldn't stand for that kind of business at all.

Mrs. Akey admitted that she had written the letter but explained that it was sent for the benefit of other employees as well. Finnell asked her to name the others, but Mrs. Akey refused (J.A. 153).

The Board concluded that the discharge of Mrs. Akey did not violate Section 8(a)(1) of the Act. The Board held that since the January 6 letter had been approved by two other employees prior to its mailing, Mrs. Akey, in preparing and submitting the letter, was engaged in concerted activity instead of merely pressing an individual grievance. However, the Board, without reaching the question whether the concerted activity was protected by Section 7, dismissed the complaint on the ground that petitioner, prior to discharging Mrs. Akey, had no reason to believe that she was acting on behalf of others in sending the letter. (J.A. 184-185.)

The court of appeals upheld the Board's conclusion that Mrs. Akey's actions in sending the second letter

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In so ruling, the Board overruled the Trial Examiner, who found that Mrs. Akey's activities were not concerted (J.A. 181-182). The Board did not specifically overturn any of the Examiner's credibility findings, but drew different inferences from the credited evidence.

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was concerted activity, but remanded the case to the Board to reconsider the finding that petitioner did not know that her acts were concerted and to determine whether the activity was protected by Section 7 (Pet. 30-35).

B. The Board's Supplemental Decision, and the Second Decision of the Court of Appeals

On remand, the Board concluded that the requirement of employer knowledge "was satisfied by the evidence that at the time of the discharge interview the [petitioner] knew of the concerted nature of Akey's activity" (J.A. 188). The Board further held that Mrs. Akey's second letter did not lose the protection of Section 7 of the Act because it contained certain inaccuracies, for the inaccuracies were insubstantial, and, in any event, there was no showing that she had acted "with intent to falsify or maliciously injure" petitioner (J.A. 189-190). Accordingly, the Board held that the discharge of Mrs. Akey violated Section 8(a)(1) of the Act, and entered an appropriate remedial order (J.A. 190-192).

The court of appeals sustained the Board's unfair labor practice finding, and enforced the Board's order (Pet. 23-26).

ARGUMENT

1. Petitioner contention (Pet. 17-20) that there is no substantial evidence to support the Board's finding that the Company had knowledge of the concerted nature of Mrs. Akey's activities presents a purely evidentiary issue, which does not warrant review by this

Court. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 491. In any event, the facts detailed in the Statement amply support the Board's finding.

Thus, as soon as Vice-president Finnell announced that Mrs. Akey was discharged for writing the January 6 letter and before anyone had left the room, she stated that she had written the letter for other employees as well as herself.[1] There was no reason for the Company to doubt the validity of this assertion, in the light of Mrs. Akey's past history as a leader among the employees, her role in the union campaign of 1957, and the Company's admission to the health department officer that it suspected she had also sent the earlier letters. In these circumstances, and since the Company had not as yet taken any action to implement Finnell's announcement, the Board was clearly reasonable in concluding that the Company was aware, before Mrs. Akey's discharge was effected, that she had engaged in concerted, and not personal, activity.

2. Petitioner's contention (Pet. 8-16) that its discharge of Mrs. Akey was "for cause," and thus privileged under Section 10(c) of the Act, likewise does

[1] Petitioner's contention (Pet. 19-20) that there is no evidence in the record to support this finding is erroneous. Vice-president Finnell testified (J.A. 153) that Mrs. Akey said "she was writing it [the letter] for a bunch of other people." And Employees Poore and Mullins testified that they had sanctioned the writing of the letter (J.A. 69-70, 85-86).

Section 10(c) provides in relevant part that "No order of the Board shall require the reinstatement of any indi-

not present any issue warranting further review. Section 10(c) "cannot mean that an employer is at liberty to punish [an employee] by discharging him for engaging in concerted activities which § 7 of the Act protects." *National Labor Relations Board* v. *Washington Aluminum Co.*, 370 U.S. 9, 17. The Board properly concluded that the January 6 letter, for which Mrs. Akey was discharged, was activity protected by Section 7. All of Mrs. Akey's complaints concerned sanitary conditions at the plant, which were matters of common concern to the employees; a concerted protest with respect to such matters is a clear form of concerted activities for mutual aid or protection.[2] Nor was the protection of Section 7 lost because the January 6 letter contained some inaccuracies. As the Board pointed out (J.A. 189), the letter made eight complaints; three are clearly substantiated by the record (freezing temperatures, and lack of hot water and a dressing room), four "are not so easily categorized as true or false on the basis of this record," and only one (cleaning of the washroom only once a week) was unsupported. Moreover, the

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vidual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

[2] "[C]oncerted activities by employees for the purpose of trying to protect themselves from working conditions as uncomfortable as the testimony and Board findings showed them to be in this case are unquestionably activities to correct conditions which modern labor-management legislation treats as too bad to have to be tolerated in a humane and civilized society like ours." *Washington Aluminum Co.*, *supra*, at 17.

complaints were directed solely to the state regulatory agency which policed such matters, and there is no showing that they were made "with intent to falsify or maliciously injure the [petitioner], that they were defamatory or insulting in character, or that they were manifestly destructive of discipline" (J.A. 187-188). In these circumstances, the Board acted well within its discretion in concluding that inaccuracies in the letter were not sufficient to remove it from the protection of Section 7 of the Act.[7]

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[7] The cases relied on by petitioner (Pet. 13-15) are clearly distinguishable on their facts. For example, in *National Labor Relations Board* v. *Local Union 1229, IBEW (Jefferson Standard Broadcasting Co.)*, 346 U.S. 464, the employees distributed and mailed handbills which attacked the quality of their employer's product, made no mention of the labor dispute which motivated the attack, and were intended publicly to disparage the employer's reputation and reduce his income. Here, on the other hand, the letter was concerned with the precise subject of the dispute (*i.e.*, health conditions at the plant), it was sent only to the particular public officials charged with the duty of regulating those conditions, it made no reference to the quality of the employer's product, and was not intended to injure the employer's business.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1963.

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